



June 14, 2011

Honorable Scott E. Gessler
Secretary of State of Colorado
1700 Broadway, Suite 250
Denver, CO 80290

Re: Colorado Ethics Watch Comments on Proposed Revisions to the Rules Regarding Campaign and Political Finance, 8 C.C.R. 1505-6.

Dear Secretary Gessler:

Colorado Ethics Watch (“Ethics Watch”) is a nonpartisan, nonprofit watchdog group that holds public officials and organizations legally accountable for unethical activities that undermine the integrity of state and local government. Ethics Watch respectfully submits the following supplemental comments on the proposed revisions to the Rules Regarding Campaign and Political Finance, 8 C.C.R. 1505-6 (the “Rules”) for your consideration at the rulemaking hearing scheduled for June 14, 2011.

The proposed Rule addresses a purported conflict between subsections (A) and (B) of C.R.S. § 1-45-108(2)(a)(I) that arose when the date of the primary was moved to the last Tuesday in June through the enactment of Senate Bill 11-189, which moved the date of the primary election from August to the last Tuesday in June. The purported conflict is between subsection (B)’s requirement that be filed “[o]n the first Monday in July and on each Monday every two weeks thereafter before the primary election,” and subsection (A)’s call for quarterly reports to be filed in non-election years.

Complicating the analysis is the fact that the General Assembly considered, but failed to pass, Senate Bill 11-252, which would have adjusted the disclosure schedule for primary elections and reduced the frequency of reports. The failure of the General Assembly to pass that bill indicates that it did not wish to reduce or eliminate biweekly reporting before the June primary.

The Revised Proposed Statement of Basis, Purpose, and Statutory Authority (“Statement of Basis”) relies on two principles in support of the proposed rule: that biweekly reporting beginning the July before the June primary is “absurd,” and that requiring biweekly reports during a non-election year causes a statutory conflict.

As a matter of law, there is nothing “absurd” about requiring biweekly reports for an eleven month period before the primary election. As the Colorado Supreme Court recently held:

[A] harsh or unfair result will not render a literal interpretation absurd. The rule that we will deviate from the plain language of a statute to avoid an absurd result must be reserved for those instances where a literal interpretation of a statute would produce a result contrary to the expressed intent of the legislature.

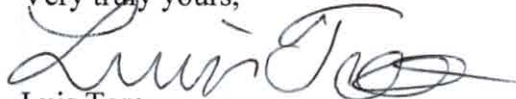
Smith v. Executive Custom Homes, Inc., 230 P.3d 1186, 1191 (Colo. 2010). It is possible for candidates to file biweekly reports for eleven months before a primary, and in fact such a requirement may not be terribly burdensome considering that many persons who may end up on the primary ballot will not become candidates until much later than July of this year. The fact that the General Assembly chose not to change subsection (B) at the time it moved the primary date indicates that it intended for biweekly reports to begin to be filed in July of this year. This may not be the schedule you or Ethics Watch would have chosen, but the General Assembly at least implicitly approved the schedule and it cannot be considered an “absurd” result. Indeed, because campaign activity is likely to be slow from July through December of this year, it should not be too burdensome for active candidates to meet the biweekly filing schedule.

It also does not appear that there is a conflict between subsection (A) and subsection (B). Rather, subsection (B) should be read as a more specific provision, applicable only to candidates who will stand in a primary election during the election year, that creates an exception to the general rule that quarterly reports are filed in an off-election year. *See Smith v. Colo. Motor Vehicle Dealer Bd.*, 200 P.3d 1115, 1117 (Colo. App. 2008). Thus, candidates who will not be in a primary (e.g., state Senators who are not up for election in 2012) would continue to file on a quarterly schedule, while other candidates would file on the more frequent calendar.

That having been said, it must be noted that the only possible conflict between the two subsections is that subsection (A) contemplates quarterly reports *during the off-election year* while subsection (B) requires biweekly reports from July through the date of the primary. To the extent this is a conflict, resolving that conflict would not justify eliminating biweekly reports *during the election year*. If any rule is justified, it would only be a rule that the quarterly schedule will control over the biweekly schedule *during the off-election year*. Biweekly reporting would commence in January for primary candidates. Alternatively, the same result could be achieved by making any rule change temporary, to expire by its own terms in January 2012, to permit the General Assembly to consider a change to the statute.

We appreciate this opportunity to comment on the proposed Rule.

Very truly yours,

A handwritten signature in black ink, appearing to read "Luis Toro". The signature is fluid and cursive, with a large initial "L" and a stylized "T".

Luis Toro
Director